IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1506 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABUBHAI DHULABHAI PRAJAPATI

Versus

COLLECTOR OF MEHSANA

Appearance:

1. Special Civil Application No. 1506 of 1987

MR PT JASANI for Petitioner/

MR BM MANGUKIYA for Petitioner.

Mr. LR Poojari, AGP for Respondent.

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 25/03/2004

ORAL JUDGEMENT

Learned Advocate, Mr. PT Jasani/Mr. BM Mangukia for the petitioner is absent. Yesterday the matter was on Board and was called out thrice but the ld. advocates for the petitioner did not remain present. Therefore, the matter was kept today. Today also the learned

advocates have not remained present. Hence, this Court has no other alternative but to proceed for passing ex-parte order.

2. The present Special Civil Application filed under Article 226 of the Constitution of India seeks an appropriate writ, direction or order restraining the respondent from reverting the petitioner from the post of Deputy Mamlatdar and further to direct the respondent to pay to the petitioner his salary as Deputy Mamlatdar regularly from month to month. He has also further prayed to declare that seniority list dated 8.1.87 is final and new seniority list dated 9.3.87 may be struck down and seniority of the petitioner may be calculated as per the seniority list dated 8.1.87. Few facts are necessary to be stated for the purpose of determination of the Special Civil Application which are as under.

3. The petitioner is serving as Deputy Mamlatdar since 1982 and at the relevant time was working as Assessment Officer at Kadi Municipality on deputation since 1.9.82. According to the petitioner he has joined the Revenue Department in the year 1965. That a provisional seniority list dated 31.7.86 was published by the respondent and objections were invited against the same before finalising the same. It is the case of petitioner that after considering the objections the respondent had published a seniority list of Deputy Mamlatdar on 8.1.87 in which the petitioner's name was shown to be at Sl. No. 24 in Part-III. It is the case of the petitioner that after the aforesaid seniority list dated 8.1.87 was finalised all of a sudden and behind the back of the petitioner and without inviting any objections the respondent has changed the seniority list on 9.3.87 by which the earlier seniority list which came to be finalised on 8.1.87 came to be modified and the petitioner was shown to be at Sl. No. 109. It is pertinent to note that in the earlier seniority list dated 8.1.87 which was finalised after inviting the objections the petitioner was shown at Sl. No. 24 in Part-III. It is the case of the petitioner that before changing/modifying the seniority list dated 8.1.87 which was finalised after inviting the objections and considering the objections, further objections are not invited and affected persons are not heard. As the petitioner was shown at Sr. No. 109 in the new modified seniority list the petitioner was apprehending that he will be reverted from the post of Deputy Mamlatdar and therefore has filed the present Special Civil Application.

4. The present Special Civil Application came up for hearing before the Division Bench of this Court and this Court by order dated 18.4.87 granted interim relief directing the respondent to maintain status-quo as to petitioner's present service conditions. However, from the record it appears that the said interim relief has not been continued, as when the petition came up for hearing on 6.9.1990 there is no mention with regard to continuation of the interim relief. The learned AGP, Shri Poojari has also no instruction with regard to latest position of the petitioner.

5. On the other hand, the learned AGP, Mr. Poojari has submitted that the seniority list dated 8.1.87 was changed/modified in view of the judgment delivered by this Court and for the purpose of implementing the judgment of this Court, the earlier seniority list dated 8.1.87 was required to be modified/changed to give effect to the judgment of this Court and therefore the authority is justified in modifying/changing the seniority list dated 8.1.87. I have heard the learned AGP, Mr. Poojari and have also gone through the documentary evidence. I am of the view that the present Special Civil Application is required to be allowed only on the ground that before modifying/changing the seniority list dated 8.1.87, no opportunity was given to the affected employees whose seniority was to be affected. Neither the State Government has invited any objections before modifying and/or changing the finalised list dated 8.1.87 and therefore the action of the respondent is in clear and flagrant violation of principles of natural justice. As stated above in the seniority list dated 8.1.87 which was finalised after inviting the objections the petitioner's name was shown at Sr. No. 24 and in the impugned seniority list dated 9.3.87 the petitioner is shown at Sr. No. 109. Therefore when his seniority is affected and he is put to be at a lower stage in the seniority list, then certainly the petitioner is required to be given an opportunity of being heard. Mr. Poojari is right in his submission that if the petition is allowed in toto and the entire seniority list dated 9.3.87 is quashed and set aside,it is likely that certain other employees who are placed above the petitioner in the new seniority list dated 9.3.87 are also likely to be affected, but as the petitioner has not joined the other employees as parties to the petition no relief should be granted to quash and set aside the seniority list dated 9.3.87. Nothing is on record to suggest as to what is the latest position with regard to the petitioner at present. However, in view of the fact that the impugned seniority list dated 9.3.87 modifying the earlier

seniority list dated 8.1.87 is prepared without inviting objections and without giving opportunity to the petitioner, it would be just and proper to direct the respondents and the competent authority to give an opportunity of being heard to the petitioner to show cause why the seniority list dated 8.1.87 in which the petitioner is shown at Sl. No. 24 be not modified and/or changed in view of the circumstances prevailing and the said exercise should be done within a period of 8 weeks from the date of receipt of writ of this Court and/or production of certified copy of this order before the authority. Though interim relief was granted by this Court, ofcourse the same was not continued, but in view of the fact that the petitioner was earlier protected, it will be in the fitness of things to direct maintaining of status-quo as to the petitioner's service conditions and not to revert the petitioner from the post of Deputy Mamlatdar, if the petitioner is not reverted so far, till fresh decision is taken by the respondent. The petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs. Interim relief shall stand vacated, subject to the above observations.

rmr. [M.R. Shah,J.]